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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/847,794

Filing Date: May 02, 2001

Appellant(s): HUFFMAN, JACKIE L.

Peter H. Priest
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 9, 2006 appealing from the

Office action mailed September 16, 2005

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

Claims 1-18 have been amended subsequent to the final rejection.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

| | | |
|-----------|---------------------|---------|
| 6,857,567 | Latimer et al. | 02-2005 |
| 6,049,779 | Berkson, Stephen P. | 04-2000 |
| 5,980,429 | Nashner, Lewis M. | 11-1999 |

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims and are reproduced below from the Final Office Action, mailed September 16, 2005, for the convenience of both the Appellant and the Board of Patent Appeals:

Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Latimer et al., U.S. Patent No. 6,857,567 in view of Berkson, U.S. Patent No. 6,049,779 and further in view of Nashner, U.S. Patent No. 5,980429.

Regarding Claims 1 and 11 Latimer et al. teach a system and method for providing performance feedback to a cashier (operator, clerk, salesperson, employee, etc.) at a point-of-sale terminal (Column 1, Lines 52-63;) for the purpose of improving the operator's scanning technique and effectiveness (productivity, performance, efficiency, accuracy, etc.; Abstract; Column 1, Lines 52-63; Column 9, Lines 13-18).

More specifically Latimer et al. teach a system and method for providing feedback to a cashier at a point-of-sale (POS) terminal comprising:

- measuring and displaying work session performance feedback directly to a cashier (clerk, salesperson, counterperson, operator, etc.) during and after a work session (i.e. real-time; Column 3, Lines 44-54; Column 6, Lines 51-63; Column 7, Lines 27-42; Figures 1-3, 10, Element 48; Figures 7-9, Element 20); and

- displaying to the cashier a performance report indicating the cashier's measured performance at the end of the work session (Column 6, Lines 51-63; Figure 4).

Latimer et al. further teach that it is old and well known that "existing systems may also include a monitoring system for measure the *scanning rate* of the operator." (i.e. the tasks comprising the number of items scanned per unit time, measuring the cashier's performance of work session tasks; Column 1, Lines 32-34).

Latimer et al. does not expressly teach displaying performance goals to the cashier at the start and/or the end of a work session as claimed.

Berkson teaches setting employee performance goals and displaying performance goals (targets, objectives, etc.) at the end of a work session, in an analogous art of providing operator performance feedback, for the purpose of motivating operators to meet performance goals (incentives; Abstract; Column 2, Lines 38-68; Column 3, Lines 1-12).

Berkson teaches that the system and method for providing feedback to an operator at a terminal (service terminal, computer, etc.) comprises:

- monitoring and measuring the operator's performance during a work session (shift, time period; performance data collection system, performance evaluation component; Column 2, Lines 43-45; Column 6, Lines 31-49; Figure 1, Element 26 as shown below; Figure 2, Element 60);

- generating a performance report at the end of the work session comparing the operator's measured performance with the performance goal ("At the completion of a call by the ACD agent, the system automatically generates measurements of the two monitored performance parameters.... and compares the performance measurements to established performance parameter standards", Column 3, Lines 1-10 and 45-50; Column 6, Lines 55-68; Column 9, Lines 35-40; Figure 2, Elements 60-62; Figure 3, Elements 80-84); and

- rewarding operators that achieve targeted performance level(s) wherein after receives the reward the operator is returned to the general application (system; Column 3, Lines 1-12, 5-68).

Berkson further teaches that the collection and reporting of operator performance metrics as well as systems for motivating operators based on performance feedback, including the display (at the employee's terminal) of an operator's current performance, is old and well known in the art (Column 1, Lines 21-68).

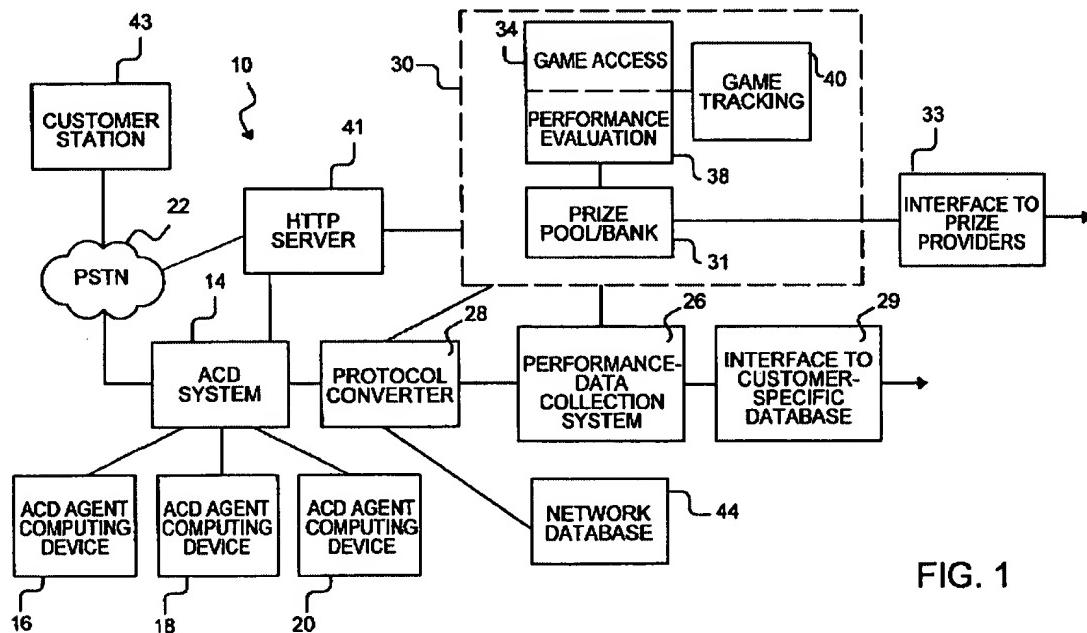


FIG. 1

It would have been obvious to one skilled in the art at the time of the invention that the system and method for providing feedback to a cashier at a point-of-sale terminal as taught by Latimer et al. would have benefited from setting employee performance goals and displaying performance goals at the end of a work session in view of the teachings of Berkson; the resultant system enabling retailers (merchants, businesses) to enhance a cashier's overall performance by motivating the cashier to achieve their performance target (desired, standard, goal) performance goal (Berkson: Abstract).

Neither Berkson nor Latimer et al. teach displaying an operator's performance goal at the start of the work session as claimed.

Nashner teaches displaying performance targets/goals **prior** (e.g. prescribed goal) to and during a training session (time period, session, shift, activity, etc.), in an analogous art of operator performance feedback, for the purpose of motivating users (“A well accepted principle in education is that a trainee striving to achieve a clearly identified, objective goal while receiving periodic objective feedback relative to his progress is the best motivated.”, Column 3, Lines 32-35; Abstract; “information is provided to the subject regarding goals of the training and how well the goals are being achieved.”, Column 4, Lines 12-27; Figure 1).

More generally Nashner teaches a performance monitoring and feedback system and method comprising:

- creating individualized performance monitoring (training) program to achieve a performance target (prescribed goal; Column 4, Lines 43-60; Column 5, Lines 40-44; Figure 1);
- setting, measuring and displaying individually set performance metrics (e.g. number of tasks performed compared to an expected individual or group benchmark, accuracy, etc.; Abstract; Column 4, Lines 12-60; Column 5, Lines 1-18); and

- setting performance targets (benchmark, goal, etc.) based on an individual's previous/past performance or a group's historical performance (Abstract; Column 4, Lines 18-27).

It would have been obvious to one skilled in the art at the time of the invention that the system and method for providing feedback to a cashier at a point-of-sale terminal, with its ability to set, monitor and display in real-time a cashier's ability to meet performance goals, as taught by the combination of Latimer et al. and Berkson would have benefited from displaying at the start of the work session the cashier's target performance goal in view of the teachings of Nashner; the resultant system motivating the cashier to achieve the work session's performance target by clearly identifying the expected performance objective at the start of the session (Berkson: Abstract; Nashner: Column 3, Lines 32-35; Column 4, Lines 12-27).

Regarding Claims 2-3 and 12-13 Latimer et al. teach a cashier performance feedback system and method wherein the feedback (instructions, advice, teachings, etc.) is tailored to each individual operator based on historical scanning information (i.e. historical performance data for each individual cashier; Column 3, Lines 35-43).

Latimer et al. does not expressly teach the utilization of performance goals or subsequently setting individual performance goals as claimed.

Berkson teaches the setting, measuring and displaying of measured performance and performance goals for each operator ("The PDC can be programmed to monitor target performance parameters, or metrics, that are associated with each ACD agent's performance.", Column 6, Lines 36-38) in the

analogous art of providing operator feedback (operator performance), for the purpose of motivating operators to meet performance goals (incentives; Abstract).

Berkson does not expressly teach that the operator performance goals are determined using historical performance data for each individual cashier as claimed.

Nashner teaches the creation an individualized performance-monitoring (training) programs wherein individual performance goals (benchmarks, prescribed goals, etc.) are individually set for each user (subject, operator, etc.; Column 4, Lines 43-60; Column 5, Lines 40-44; Figure 1) based on the individual's and/or group's historical performance (Abstract; Column 4, Lines 18-27), in an analogous art of performance monitoring and feedback for the purpose of determining the effectiveness of the individual training program (Column 4, Lines 18-27).

It would have been obvious to one skilled in the art at the time of the invention that the system and method for providing performance feedback to a cashier at a point-of-sale terminal as taught by combination of Latimer et al. and Berkson would have benefited from providing individualized (customer, personalized, unique, etc.) performance feedback to cashiers by setting individual performance goals for each individual cashier based on their personal historical performance in view of the teachings of Nashner; the resultant system enabling users of the system to determine the effectiveness of the individual performance program (training) efforts (i.e. the ability of the training program to enable users to reach their performance goals; Nashner: Column 4, Lines 18-27).

Regarding Claim 4 Latimer et al. teach a cashier performance feedback system and method wherein the system (point-of-sale terminal, device, computer, etc.) runs a general point-of-sale application

(software, code, program, etc.; Column 1, Lines 36-45; Column 2, Lines 37-68; Column 3, Lines 1-34; Figures 1-3, 6 and 8-10) and the performance report is integrated (part of, connected to, add-on, etc.) into the general point-of-sale system (application, terminal, code, device, etc.; Column 3, Lines 26-33; Column 8, Lines 66-67; Column 9, Lines 1-13; Figure 2).

Regarding Claims 5 and 15 Latimer et al. does not expressly teach displaying cashier performance goal information as claimed.

Berkson teaches setting operator performance goals and displaying performance goals (targets, objectives, etc.) at the end of a work session, in an analogous art of providing operator feedback (operator performance), for the purpose of motivating operators to meet performance goals (incentives; Abstract).

It would have been obvious to one skilled in the art at the time of the invention that the system and method for providing feedback to a cashier at a point-of-sale terminal as taught by Latimer et al. would have benefited from setting operator performance goals and displaying performance goals at the end of a work session in view of the teachings of Berkson; the resultant system enabling retailers (merchants, businesses) to enhance a cashier's overall performance by motivating the cashier to achieve their expected performance target (Berkson: Abstract).

Neither Latimer et al. or Berkson teach displaying an cashier's performance goal after the cashier logs into (start of work session) system as claimed.

Nashner teaches displaying performance targets/goals **prior** (e.g. prescribed goal) to and during a training session (time period, session, shift, activity, etc.), in an analogous art of operator performance

feedback, for the purpose of motivating users to obtain their performance goals (Column 3, Lines 32-35; Abstract; Column 4, Lines 12-27; Figure 1).

It would have been obvious to one skilled in the art at the time of the invention that the system and method for providing feedback to a cashier at a point-of-sale terminal, with its ability to set, monitor and display in real-time a cashier's ability to meet performance goals, as taught by the combination of Latimer et al. and Berkson would have benefited from displaying at the start of the work session the cashier's target performance goal in view of the teachings of Nashner; the resultant system enabling retailers (merchants, businesses) to enhance an employee's overall performance by motivating the employee to meet target performance displayed at the start of the session (Berkson: Abstract; Nashner: Column 3, Lines 32-35; Column 4, Lines 12-27).

Nashner does not teach displaying an cashier's performance goal after the cashier logs into system as claimed.

Official notice is taken that operator sessions typically start with the operator logging onto the system enabling the system to recognize/authorize the operator to use the system.

It would have been obvious that the cashier performance feedback system and method as taught by the combination of Latimer et al., Berkson and Nashner, with its ability to display a cashier's performance goal at the start of a session, would have benefited from starting the session after the cashier logged onto the system in view of the teachings of official notice; the resultant system informing the cashier at the start of the work session (i.e. immediately following the cashier's logon) what their

individual performance goal is for that work session thereby motivating the cashier to meet the set/prescribed goal (Nashner: Column 3, Lines 32-35; Column 4, Lines 12-27).

Regarding Claims 6-7 Latimer et al. does not expressly teach that the cashier performance feedback system (terminal, device, computer, etc.) returns to the general (main, default, etc.) point-of-sale system upon receiving input (button, keyword, mouse, etc.) from the cashier.

Official notice is taken that returning a user to their original task, activity, system or the like after receiving a response to a request for user input (i.e. pop-up window, dialog box, splash screen, etc.) is old and very well known.

It would have been obvious to one skilled in the art at the time of the invention that the system for providing performance feedback to a cashier, as taught by the combination of Latimer et al., Berkson and Nashner would have benefited from returning the cashier to the general point of sale application after displaying the cashier's performance goal in view of the teachings of official notice; the resultant system enabling the cashier to acknowledge the expected performance goal and start the work session.

Regarding Claims 8 and 16 Latimer et al. teach a cashier performance feedback system and method comprising the displaying, directly to the cashier, a performance report indicating the cashier's measure performance at the end of the work session (Column 6, Lines 51-63; Figure 4).

Latimer et al. does not expressly teach the setting of a performance goal or the subsequent displaying cashier performance goal information when the cashier logs out of the point-of-sale application (i.e. ends the work session).

Berkson teaches setting operator performance goals and displaying performance goals (targets, objectives, etc.) at the end of a work session, in an analogous art of providing operator feedback (operator performance), for the purpose of motivating operators to meet performance goals as discussed above.

It would have been obvious to one skilled in the art at the time of the invention that the system and method for providing feedback to a cashier at a point-of-sale terminal as taught by Latimer et al. would have benefited from setting operator performance goals and displaying performance goals at the end of a work session in view of the teachings of Berkson; the resultant system enabling retailers (merchants, businesses) to enhance an cashier's overall performance by motivating the cashier to achieve their expected performance goal (Berkson: Abstract).

Berkson does not teach displaying a cashier's performance goal after the cashier logs into system as claimed.

Official notice is taken that operator sessions typically end with the operator logging out of the system thereby enabling the system to recognize that the operator has completed their work session.

It would have been obvious that the cashier performance feedback system and method as taught by the combination of Latimer et al., Berkson and Nashner, with its ability to display a cashier's performance goal at the end of a session, would have benefited from ending the session after the cashier logged out of the system in view of the teachings of official notice; the resultant system informing the cashier at the end of the work session how well they did during the current work session.

Regarding Claims 9 and 17 Latimer et al. does not expressly teach setting performance goals/targets for each cashier and is silent on the architecture of the system.

Berkson teaches setting performance goals for each operator as discussed above and that the operator performance feedback system and method has an multi-tiered architecture comprising a plurality of operator terminals (front-end, agent computing device, customer station), back-end subsystems (modules, components, applications) including but not limited to the performance data collection, evaluation and reward (motivator) subsystems, network database and a network connecting the various terminals and subsystems (layers of the system; Figure 1 as shown above; Column 5, Lines 57-68; Column 6, Lines 1-35), in an analogous art of performance monitoring and feedback for the purpose of motivating operators to achieve set performance goals.

It would have been obvious to one skilled in the art at the time of the invention that the system and method for providing performance feedback to cashiers at a point-of-sale terminal as taught by Latimer et al. would have benefited from setting performance goals for each cashier as well as utilizing a multi-tiered system architecture in view of the teachings of Berkson; the resultant system providing cashiers with feedback regarding the ability to achieve the set performance goals performance feedback relating to the cashiers achievement of a performance goal thereby motivating the employee to meet target performance metrics (Berkson: Abstract).

Regarding Claims 10 and 18 Latimer et al. does not teach setting of performance goals for each cashier and is silent on the architecture of the cashier performance feedback system and method.

Berkson teaches the setting, measuring and displaying of operator performance goals for each operator and that the system utilizes a multi-tiered (i.e. network, internet, etc.) architecture as discussed above.

Nashner teaches that a system administrator (user, "prescriber") creates individualized performance (training) programs for individual users wherein individual performance goals (benchmarks, prescribed goals, etc.) are set for each user (subject, operator, etc.; Column 4, Lines 43-60; Column 5, Lines 40-44; Figure 1) based on the individual's and/or group's historical performance (Abstract; Column 4, Lines 18-27), in an analogous art of performance monitoring and feedback for the purpose of determining the effectiveness of the individual training program (Column 4, Lines 18-27).

It would have been obvious to one skilled in the art at the time of the invention that the system and method for providing performance feedback to a cashier at a point-of-sale terminal as taught by combination of Latimer et al. and Berkson would have benefited from providing individualized (customer, personalized, unique, etc.) performance feedback to cashiers by enabling a user (trainer, manager, supervisor, etc.) set and monitor individual performance goals for each individual cashier in view of the teachings of Nashner; the resultant system enabling users of the system to determine the effectiveness of the individual performance (training) efforts (i.e. the ability of the training program to enable users to reach their performance goals; Nashner: Column 4, Lines 18-27).

(10) Response to Argument

10.1 The applicant argues, see Appeal Brief, Page 8, Lines 1-5; Page 9, Lines 1-2 and 22-23 and Page 11, Lines 16-23, that the art rejections are not supported by the prior art wherein Latimer et al., Berkson and/or Nashner fail to disclose, teach or suggest all of the elements set forth in the claims when the claims are considered as a whole. Specifically applicant argues that the prior art of record fails to disclose, teach or suggest displaying a performance goal screen at the **start** of a work session (emphasis added) as recited in Claims 1 and 11.

The examiner respectfully disagrees. Latimer et al. teach a system/method for providing performance feedback **directly** to an operator (cashier) of a point-of-sale terminal (checkstand) wherein the performance feedback is provided in **real-time**, **during**, **on-demand** and/or **at the end** of the operator's session in the form of visual, video and/or audio displays and/or reports (reviews) as evidenced by at least the following (emphasis added):

- "...system which uses the scanning technique information to provide feedback to the operator indicating the effectiveness of the operator's scanning technique and may also provide information to management for analysis.", Abstract;
- "**SCANNER/SCALE DETERMINES SCAN CHARATERISTICS**", "**PC APPLICATION LOGS SCANNER/SCALE DATA TO DATABASE**", "**PC APPLICATION PROVIDES REAL-TIME FEEDBACK**", "PC

APPLICATION PROVIDES REVIEW OF OPERATOR TECHNIQUE/PERFORMANCE", "PC APPLICATION PROVIDES REVIEW OF KEY TRAINING CONCEPTS WHICH MAY BE TAILORED TO MEASURED TECHNIQUES", Figure 4, Elements A-C; Figure 5, Elements D-E, as shown below, emphasis added;

- "Existing systems may also include a monitoring system for measuring the scanning rate of the operator.", Column 1, Lines 32-33;
- "The software application utilizes scanning technique information received from the scanner 40 to evaluate the effectiveness of an operator's scanning technique. The application may also display scanning instructions on a video monitor 49 of the PC 43, including animations and videos of proper scanning techniques, and may also broadcast audio descriptions/instructions. The instructions are preferably tailored to an individual operator based upon data received from the scanner 40 after the operator has scanned a certain number of specific items. The application running on the PC 43 may provide information and reports about scanning techniques to the operator, as well as to store management, along with suggestions for technique improvements. The scanner 40 in the training mode may be located in a customary POS checkstand, or may be located in a special training area away from the usual transactional setting. In another embodiment, hereinafter referred to as the "monitor mode," the scanner 40

continuously monitors the scanning technique of an operator based upon items scanned that are purchased by customers.", Column 3, Lines 33-50;

- "From this data, inferences about the operator's scanning technique can be formed, and **feedback** can then be supplied to the **operator** and/or to store management.", Column 4, Lines 5-7;
- "The PC application may also provide **real-time** scanning technique **feedback to the operator** via the video monitor 49, or any other suitable means. This process **continues until the last training** item is scanned, after which, the PC application **evaluates** the operator's performance and provides a **review** of the operator's scanning technique **to the operator** and/or to the performance database. The **review** may include information-describing flaws in the operator's scanning technique, suggestions on how to improve scanning technique, or any other suitable feedback data.", Column 6, Lines 51-63;
- "**Reports, reviews, and evaluations** of operator scanning technique may be produced as hard copy reports from a printer and/or may be displayed on a video monitor, such as PC monitor 49. Additionally, **real-time feedback** may be provided **to the operator** in graphical form via the visual feedback display 48. The visual feedback display 48 may be incorporated into the scanner 40, as shown in FIG. 1, or may be

incorporated into any other suitable scanning system.", Column 7, Lines 28-35;

- "the system provides **feedback to the operator** that assists the operator in using the scanner in a more ergonomic and/or efficient manner, as described above. The scanner display 20 provides information **to the operator** by visual and/or audible mechanisms. Forms of visual feedback could be, for example, lamps of various colors or which are arranged in sequential rows (as in the "bar graph" type display), or a video display with graphical or textual information about the operator's scanning technique.", Column 8, Lines 14-24; and
- "Benefits of the various embodiments described herein may include one or more of the following: (a) **improved operator productivity** and scanning technique, (b) reduction in physical stress on the operator thus reducing repetitive motion injuries, (c) **continuous improvement feedback**, and (d) reports to management about operator technique.", Column 9, Lines 13-18.

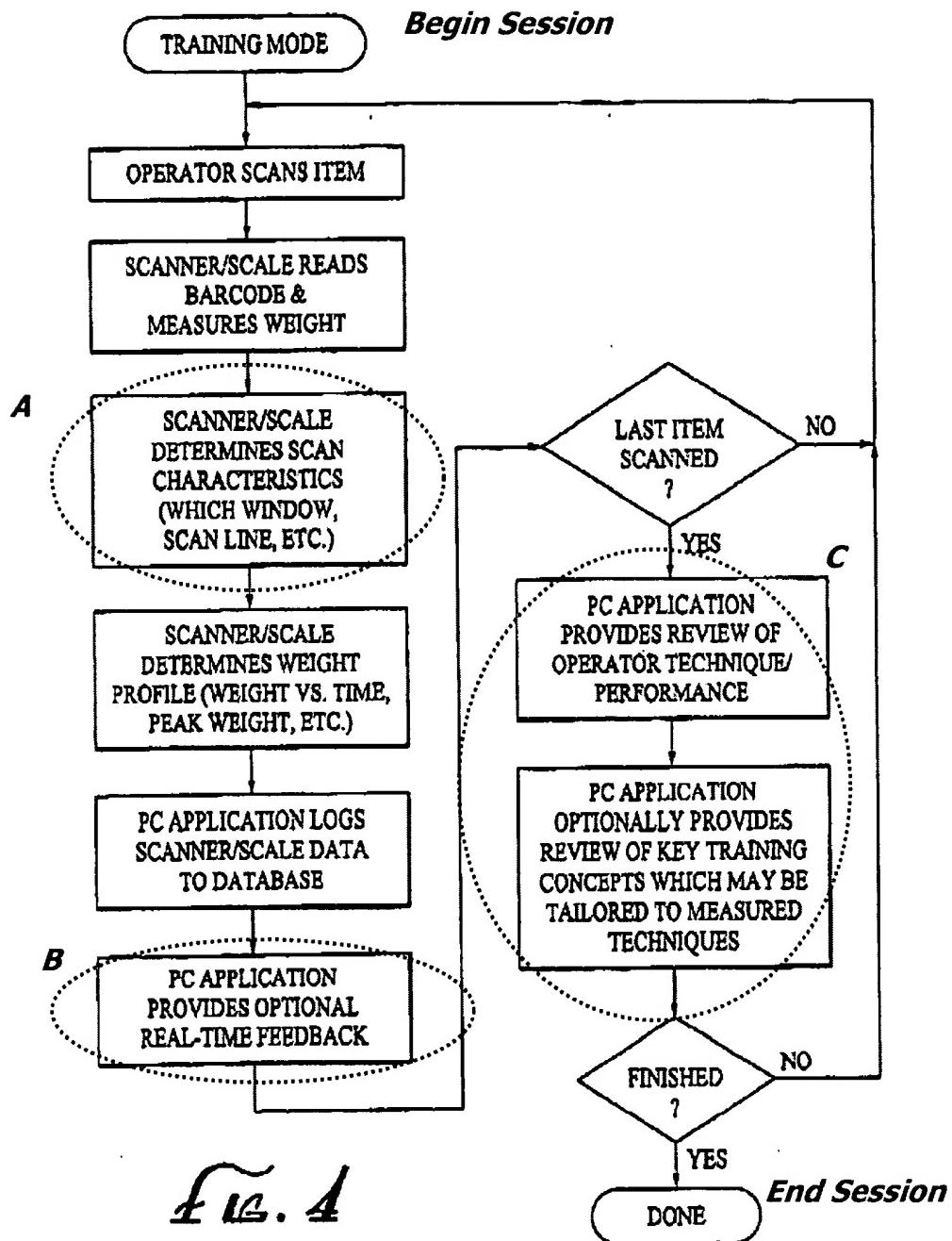


Figure 1: Latimer et al., Figure 4

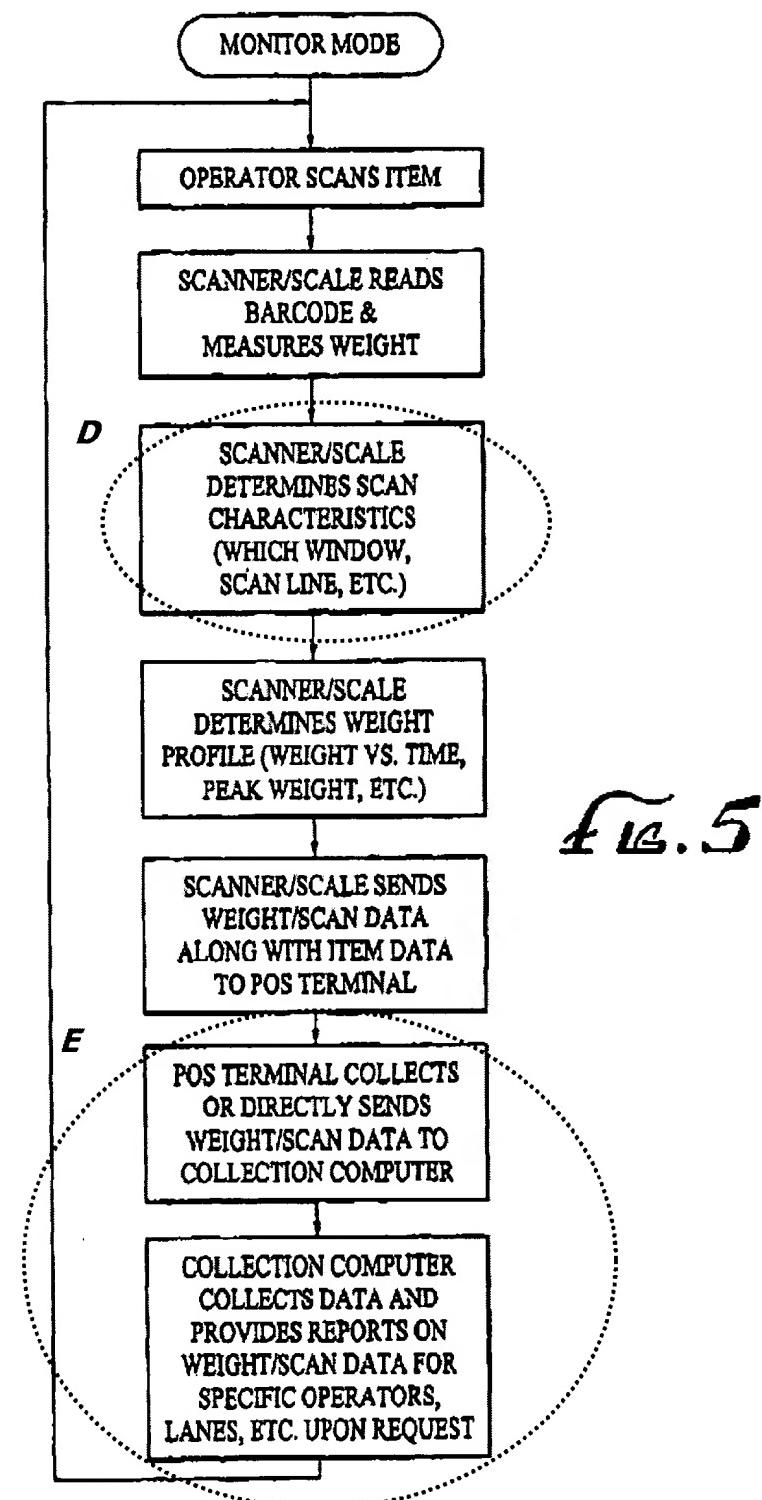


Figure 2: Latimer et al., Figure 5

Latimer et al. teach a system/method for providing immediate and real-time performance feedback to cashiers at a point-of-sale terminal during and at the end of a work session for the purposes of improving cashier productivity, as discussed above Latimer et al. does not expressly teach displaying “**a performance goal screen at the start of a work session**” (emphasis added) as recited in Claims 1 and 11.

However as cited in the previous office action(s) providing users (operators, cashiers, workers, employees, staff, persons, etc.) with a performance goal (target), wherein the performance goal is communicated (e.g. displayed) as well as known prior to the performance of the operation for which the goal/target has been set is an old and well known motivational technique used to improve the users performance (operation, execution) of the measured/monitored operation. More specifically examiner agrees with the applicant and Nashner that providing goals to users so that they know what is expected of them (i.e. prior to performing the expected work/task) and know how they are doing in reference to those expectations/goals is an old and very well known training/motivational principle utilized by any number of performance feedback systems and methods.

Support for this well-known fact can be found in at least the following:

- "It is known that one way to motivate employees to perform their tasks as efficiently as possible is to provide them with ongoing feedback as to their level of performance. In a retail store, one important task having a direct impact on customer satisfaction is the speed and accuracy with which the checkout process is

accomplished.", Specification (May 2, 2001): Prior Art Background Section, Page 1, Lines 11-14; Appeal Brief (February 9, 2006): Page 2, Lines 12-14; emphasis added (i.e. providing feedback to a cashier as to level of performance requires a target/goal in order to have any meaning – for example telling someone that they scored 100 without telling them what the target/maximum score is meaningless; wherein scoring 100 out of 100 would be great, scoring 100 out of 1000 would be poor);

- Non-Final Office Action (April 27, 2006): Pages 4-5; and

- Nashner teaches the creation of individualized performance (training) programs

for individual users wherein individual performance goals (benchmarks, prescribed

goals, etc.) are set for each user (Column 4, Lines 43-60., Column 5. Lines 40-44;

Figure 1) based on the individual's and/or group's historical performance (Abstract,

Column 4, Lines 18-27) for the purposes of providing feedback and motivation to the

user to meet the prescribed target goals/objectives ("A well accepted principle in

education is that a trainee striving to achieve a clearly identified, objective goal while

receiving periodic objective feedback relative to his progress is the best motivated.",

Column 3, Lines 32-35, Column 4, Lines 12-27).

It would have been obvious to one skilled in the art at the time of the invention that the system and method for providing immediate and on-going performance feedback to a cashier (checkstand operator in a retail environment) based on a plurality of measured/monitored performance characteristics would have benefited from providing the cashier with a performance goal/target at the start of a work session in

view of the prior art and in view well known motivational/training techniques; the resultant performance management system/method motivating cashiers to achieve their performance targets during their work session (operation of the point-of-sale terminal) as well as provide a level/base upon which they can compare the feedback against.

10.2 The applicant argues, see Appeal Brief, Page 10, Lines 17-19, Page 8, Lines 21-23, that the art rejections are not supported by the prior art wherein Latimer et al., Berkson or Nashner fail to disclose, teach or suggest all of the elements set forth in the claims when the claims are considered as a whole. Specifically applicant argues that the prior art of record fails to disclose, teach or suggest displaying at the **end of** the work session a performance report screen including the cashier's **measured performance** and the performance goal to provide performance feedback directly to the **cashier**" (emphasis added) as recited in Claims 1 and 11.

The examiner respectfully disagrees. Latimer et al. teach a system/method for providing performance feedback **directly** to the operator (cashier) of a point-of-sale terminal (checkstand) wherein the feedback is provided in real-time, during, on-demand and/or **at the end of** the operator's session as evidenced by at least the following (emphasis added):

- "PC APPLICATION PROVIDES **REVIEW OF OPERATOR TECHNIQUE/PERFORMANCE**", "PC APPLICATION PROVIDES **REVIEW OF KEY TRAINING CONCEPTS WHICH MAY BE TAILORED**

TO MEASURED TECHNIQUES", Figure 4, Elements A-C; Figure 5,
Elements D-E, as shown below, emphasis added;

- "The software application utilizes scanning technique information received from the scanner 40 to **evaluate the effectiveness of an operator's scanning technique**. The application may also display scanning instructions on a video monitor 49 of the PC 43, including animations and videos of proper scanning techniques, and may also broadcast audio descriptions/instructions. The instructions are preferably **tailored to an individual operator** based upon data received from the scanner 40 after the operator has scanned a certain number of specific items. The application running on the PC 43 may provide information and **reports** about scanning techniques **to the operator**, as well as to store management, along with suggestions for technique improvements.", Column 3, Lines 33-60;
- "The PC application may also provide **real-time** scanning technique **feedback** to the operator via the video monitor 49, or any other suitable means. This process **continues until the last training** item is scanned, after which, the PC application **evaluates** the operator's performance and provides a **review** of the operator's scanning technique **to the operator** and/or to the performance database. The **review** may include information-describing flaws in the operator's scanning technique,

suggestions on how to improve scanning technique, or any other suitable feedback data.”, Column 6, Lines 51-63; and

- “**Reports, reviews, and evaluations** of operator scanning technique may be produced as hard copy reports from a printer and/or may be displayed on a video monitor, such as PC monitor 49. Additionally, **real-time feedback** may be provided **to the operator** in graphical form via the visual feedback display 48.”, Column 7, Lines 28-35.

10.3 The applicant argues, see Appeal Brief, Page 12, Lines 13-20, that the art rejections are not supported by the prior art wherein Latimer et al., Berkson and Nashner fail to disclose, teach or suggest all of the elements set forth in the claims when the claims are considered as a whole. Specifically applicant argues that the prior art of record fails to disclose, teach or suggest that the performance goal screen and report (feedback) are **integrated** into the operation of the general POS **application** (emphasis added) as recited in Claims 4 and 14.

The examiner respectfully disagrees. Integrated into the performance management system/method, as disclosed in the Applicant's specification, is the connection between the POS Motivator (feedback system/subsystem) and the POS application (system, terminal) wherein the connection enables the system “to capture transaction data.” (Specification: Page 4, Lines 17-19; Figure 1, as shown below).

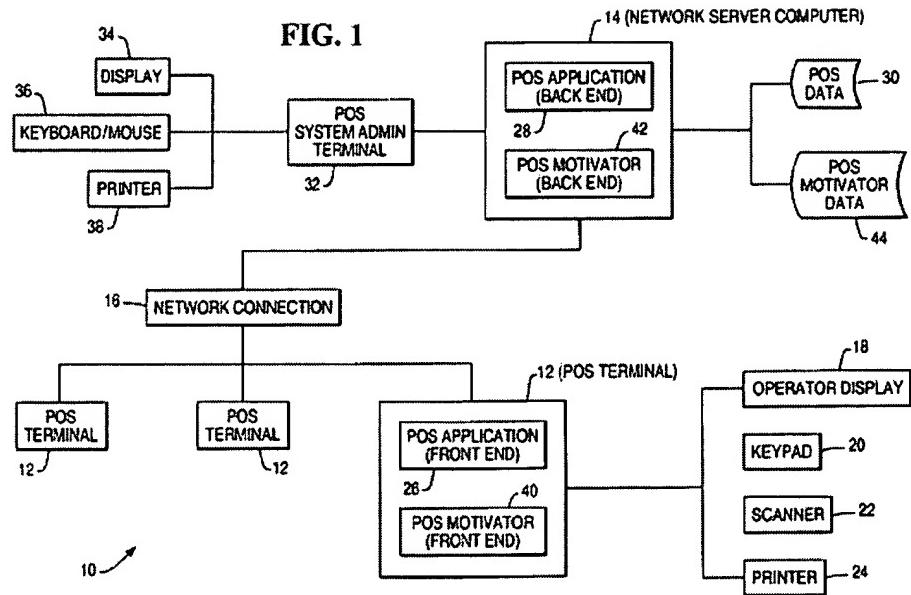


Figure 3: Applicant's Figure 1

Latimer et al. teach a cashier performance management system and method wherein the cashier's performance monitoring, measurement and continuous feedback system are integrated (connected, incorporated) with the point-of-sale (checkstand) terminal (application, device, system, etc.) for the purposes of at least capturing transaction data (scanning data) from the point-of-sale terminal/application as evidenced by at least the following:

- Figures 2-3, Elements 43, 45, 47 and 50; Figure 13, Elements 86, 90 and 92; "PC Application Logs Scanner/Scale Data to Database", "POS Terminal Collects or Directly Sends Weight/Scan Data to Collection Computer", Figure 5;
- "In this embodiment, the scanner 40 is used in its normal configuration in a checkstand with connection to a POS system 50 via a POS port 47, as shown in FIG.

3. The scanner 40 provides scanning technique information to the POS system 50,

which may then **provide the information to a central system** location for

management evaluation.", Column 3, Lines 51-60; and

- "The feedback system and graphical display may be **incorporated** into the scanner housing 80 itself, or it may comprise an add-on module 82, as shown in FIG. 13, mounted to the housing 81 of a scanner 80. In such a system, the module 82 may include a cord 84 which is connected to a port 86 on the scanner 80 for obtaining the scan and/or weight information for performing the analysis. The module 82 is removable and thus may be only temporarily connected to the scanner 80. The module 82 may comprise only the visual display 88, with processing being handled by a separate computer. For example, the module may be connected to a notebook computer 90, the computer 90 including suitable feedback analysis software. The notebook computer 90 is also connected to a port 92 on the scanner 80 for receiving the scanning and/or weight information.", Column 8, Lines 66-67; Column 9, Lines 1-13.

10.4 The applicant argues, see Appeal Brief, Page 5, Lines 1-3; Page 14, Lines 5-20, that the examiner's conclusion of obviousness is based upon improper hindsight reasoning.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon

hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

10.5 The applicant argues, see Appeal Brief, Page 5, Lines 3-6; Page 9, Lines 7-11, that there is no suggestion to combine the references.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, Latimer et al., Berkson and Nashner each teach performance management systems/methods wherein it would have been obvious to one skilled in the art at the time of the invention to modify Latimer et al.'s cashier performance management system and method to provide a performance goal at the start of a work session in order to provide motivation and feedback context to cashier's operation point-of-sale terminals (checkstands) as discussed above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

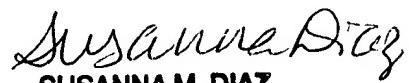
For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Scott L. Jarrett
Examiner
Art Unit 3623

March 30, 2006


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